No. 18-1150

IN THE

Supreme Court of the United States

GEORGIA, ET AL.,

Petitioners,

v.

PUBLIC.RESOURCE.ORG, INC.,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

BRIEF OF AMICI CURIAE {X} LAW STUDENTS, {Y} SOLO AND SMALL-FIRM PRACTITIONERS OF LAW, AND {Z} LEGAL EDUCATORS IN SUPPORT OF RESPONDENTS

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Other Authorities

American Bar Association, *2018 Standard 509 Information Report Data Overview* (Dec. 14, 2018),
https://perma.cc/Y6J8-W2CA 3

American Bar Association, *ABA National Lawyer Population Survey* (2018),
https://perma.cc/L66M-G4ZZ 3

American Bar Association, *Lawyer Demographics* (2016),
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INTEREST OF AMICI CURIAE

Amici are {X} law students ("Student Amici"), {Y} solo practitioners of law ("Attorney Amici"), and {Z} law professors and other legal educators ("Legal Educator Amici") in the United States.[1] They span {A} law schools and {B} states. Collectively, amici have a critical interest in being able to access the law—including the official annotations that are part of the law.

Student Amici are studying to practice law and need unfettered access to the law in order to learn, compare, and build a complex understanding of the systems that govern daily life. Legal Educator Amici study and teach law and are similarly harmed when restricted access to the law interferes with their ability to teach. Attorney Amici must be able to access the law in order to advise their clients competently and are particularly harmed when access can be limited to certain expensive databases. And all amici are harmed when the creation of tools for reading, using, and analyzing the law are hobbled by a copyright system that is meant to encourage creation, not regulate civic access to government.

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[1] Pursuant to Supreme Court Rule 37, the parties received timely notice of and have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than the amici or their counsel made a monetary contribution to the preparation or submission of this brief.

Appendix B contains the names and states of residence of {N} amici. For each person, counsel collected the user's name, city and state, and email address. Each user has attested that he or she read the draft brief, agreed with its arguments, wanted be included among those on whose behalf the brief is submitted, and is a citizen or legal resident 18 years of age or older. See https://archive.org/details/FreeTheOCGA.[2] Screenshots of the web form are attached to this brief in Appendix A.

SUMMARY OF ARGUMENT

Amici agree with the decision below, which ensures the "rights of citizens to have unfettered access to the legal edicts that govern their lives." *Code Revision Comm'n for Gen. Assembly of Georgia v. Public.Resource.Org, Inc.,* 906 F.3d 1229, 1232 (11th Cir. 2018). But it does so only for the law of one state, or at best, one circuit. Law students, solo practitioners, and small legal practices all need access to those edicts. While the Eleventh Circuit below properly applied the edicts of government doctrine to reach the correct decision regarding the Official Code of Georgia Annotated (OCGA), holding that "no valid copyright can subsist" in the annotations, *id.* at 1255, other jurisdictions inside and outside of the Eleventh Circuit remain in limbo.

Restrictions on access to the law by law students and solo practitioners is not a minor problem. As of

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[2] A small number of Legal Educator amici directly contacted counsel to sign on to the brief.

2018, there were 111,561 J.D. candidates enrolled in the 203 ABA-accredited law schools across the country. American Bar Association, *2018 Standard 509 Information Report Data Overview* (Dec. 14, 2018), https://perma.cc/Y6J8-W2CA. As of 2005,[3] 36% of lawyers—approximately 480,000 individuals—were solo practitioners. American Bar Association, *Lawyer Demographics* (2016), https://perma.cc/5E3G-H3QJ. And currently, only 2.5% of practicing lawyers are in Georgia, and 9.4% are in the Eleventh Circuit. *See* American Bar Association, *ABA National Lawyer Population Survey* (2018), https://perma.cc/L66M-G4ZZ.

The decision below represents a local solution, but the problem is nationwide and stems from the inconsistent application of the edicts of government doctrine. The Court should grant certiorari to ensure national uniformity of the doctrine and affirm that *all* law students and legal practitioners must have full and complete access to the law.

ARGUMENT

I. Students and Solo Practitioners Must Be Able to Freely Access and Use the Law.

While the public is owed unrestricted access to the law—including annotations—that it has constructively authored, *see Code Revision Comm'n*, 906 F.3d at 1255, amici, whose profession is fundamentally intertwined with the law, have a particularly vital need for that access.

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[3] More recent data was unavailable.

A. Law Students and Legal Educators Must Have Full Access to the Law.

Whether a law student intends to practice law, teach it, or do something else entirely, a core purpose of law school is to give students the tools they need to read, analyze, and understand the law. But their learning can be only be as complete as their access to the law is. When copyright law hamstrings that access and the access of legal educators, it also hobbles legal education.

Part of a legal education is studying the differences between the laws of multiple jurisdictions. When the law is balkanized, with each jurisdiction available only through some favored private entities, this task is made more difficult. When the only freely available version of the law omits critical information like the OCGA's annotations, which the court below held "clearly have authoritative weight in explicating and establishing the meaning and effect of Georgia's laws," *Code Revision Comm'n*, 906 F.3d at 1233, studying the law becomes even harder. *See also id.* at 1247 n.2. And when copyright restrictions render the law of some jurisdictions unavailable for free at all, this simply cannot be accomplished.

Relying on schools to provide full access is also no solution because the law is then available only to those whose schools can afford particular, expensive databases. Basic fairness demands that government not advantage well-resourced schools and their students over others. Even if, in some instances, these databases are offered to law schools for free, it is not enough—their access to the law must not be conditioned on the good graces of private entities governed, ultimately, by a profit motive.

The Court should grant certiorari to ensure that ability to effectively study the law that governs us all is uniformly available and is not determined by the preferences of individual private entities.

B. Solo Practitioners and Small Practices Must Have Full Access to the Law.

Practicing lawyers must make use of the law—all of the law—that applies to their clients. For example, in the criminal context, it is hard to imagine one's Sixth Amendment right to counsel being effectively satisfied by an attorney that did not do this.

This Court has previously held that a judicial opinion is "the authentic exposition and interpretation of the law, which, binding every citizen, is free for publication to all, whether it is a declaration of unwritten law, or an interpretation of a constitution or a statute." *Banks v. Manchester*, 128 U.S. 244, 253 (1888). State-sanctioned publications of the law, like the OCGA, are no different, and are just as necessary to the lawyers who represent clients as to the clients themselves.

And while large law firms may be readily able to absorb the substantial subscription costs of large commercial databases, smaller and solo firms often cannot afford these subscriptions. The expense is amplified by the possibility that the law necessary to good representation may be spread across multiple, exclusively-licensed databases, forcing attorneys in smaller practices to spread their resources even more thinly. Moreover, attorneys in these practices also tend to have smaller, less affluent clients, and so cannot reasonably pass these costs on.

While many databases fairly charge for the additional value they add, including analysis or specialized tools, there is no justification for a commercial entity to be the sole provider of the law itself, forcing all lawyers practicing in that jurisdiction to pay. As long as state governments can keep monopoly control over the publication of their laws, they are able to extract licensing fees. Whether they do this directly or through commercial proxies, it raises the cost for all who need to access the law and excludes some from accessing it at all.

C. Access to the Law Means More than the Ability to View a Restricted Version Through a Favored Provider.

Meaningful access to the law does not merely mean the ability to view through a single, limited, government-chosen service. In this case, free access to the statutory code was offered only through a single private party and did not contain the annotations that the court below held are "part and parcel of the law." *Code Revision Comm'n*, 906 F.3d at 1243. This is simply not enough.

As other amici explained to the Eleventh Circuit below, both nonprofit and for-profit innovators are hard at work building the next generation of tools for accessing and using the law. *See* Brief of Next-Generation Legal Research Platforms as Amici Curiae in Support of Defendant/Appellant, *Code Revision Comm'n for Gen. Assembly of Georgia v. Public.Resource.Org, Inc.*, 906 F.3d 1229 (11th Cir. 2018). These tools—many of which are available for free—are of particular value to Student and Attorney Amici, who lack the resources of large law firms.

New tools process and analyze freely available law to provide improved capabilities, including artificial intelligence and advanced visualizations. *Id.* at 1-2. But they also provide competition that lowers prices and increases quality for all—particularly to the benefit of small practices or soon-to-be lawyers.

Simply making the law "available" for viewing through a single vendor is therefore not enough. All parties—including those working to improve the tools available to students and lawyers—must be free to perform their own analysis of the law and offer it to the public in new, innovative ways, without paying gatekeepers for the right to something that is and should be owned by the public.

II. The Limited Reach of the Decision Below Harms Both Students and Practitioners.

The decision below is binding precedent only within the Eleventh Circuit. *See Code Revision Comm'n*, 906 F.3d 1229. Moreover, because the decision is narrowly focused on the facts underlying the development and legal effect of the OCGA, it may be challenging to apply it to other laws, states, and local governments where the underlying process and entities differ. *See id.* There are myriad state and local jurisdictions, and it is neither practical to litigate the specifics of each one nor to publish the purportedly restricted law under a cloud of risk. Without intervention by this Court, access to the law will continue to be hindered in many such jurisdictions.

As explained above, law students need to access the law of many jurisdictions in order to train effectively. Even if students intended to focus solely on the jurisdictions that they are likely to practice in,

many students simply do not know that information while in school. Thus, a decision that frees the law of one state or one circuit will not provide law students the tools or availability of the law they need.

The decision below also puts practicing lawyers in Georgia at a distinct advantage over their colleagues elsewhere. The basic building blocks of their profession—the law itself—are now readily within their grasp. Unlike their peers in other states—and particularly those in other circuits—they no longer have to depend on pricey tools to access the fundamental elements of the profession and provide effective assistance of counsel. This state of affairs cannot be justified; lawyers in one jurisdiction should not be made more or less effective by government restrictions on access to the law.

Thus, while the decision below is correct on its own merits, standing alone it is insufficient. Anyone attempting to republish or even access the law in other states or circuits may face a federal lawsuit. Students and lawyers alike need both guidance and precedent they can rely on. This Court should take this opportunity to grant the Petition and clarify that the edicts of government doctrine is not a narrow rule that can be evaded through clever governmental use of private parties, but requires real access to the law for all.

CONCLUSION

The decision below makes the law of Georgia available to all, but this is not enough. For the foregoing reasons, amici respectfully request that the Court grant the petition in order to clarify the scope of

the government edicts doctrine and ensure that the public, including students and solo practitioners, has unfettered access to the law nationwide.

Respectfully submitted,

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May 3, 2019

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APPENDIX A:
Website Screenshots

[Screenshots begin on the next page.]

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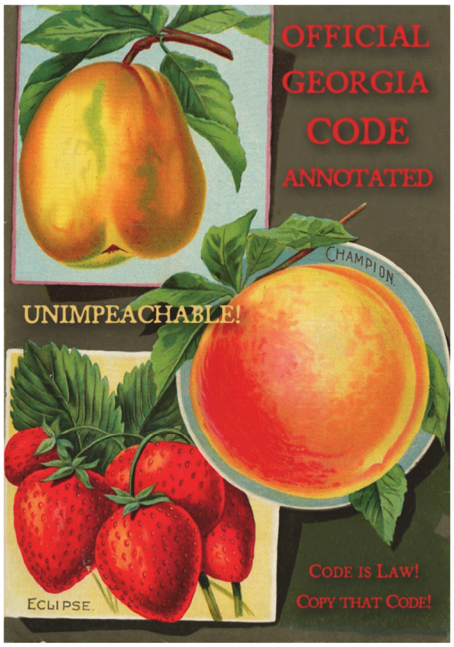
Amicus Brief - Official Code of Georgia Annotated

Welcome! This form is for law students and solo and small firm practitioners who would like to sign the Amicus Brief in support of the Public.Resource.Org petition to grant certiorari in the Supreme Court of the United States. You may read the brief here: https://archive.org/details/FreeTheOCGA
We will accept signatures until midnight on May 9, 2019.

* Required

Have You Read the Brief and Wish to Sign? *

- ◯ Yes, I have Read the Brief

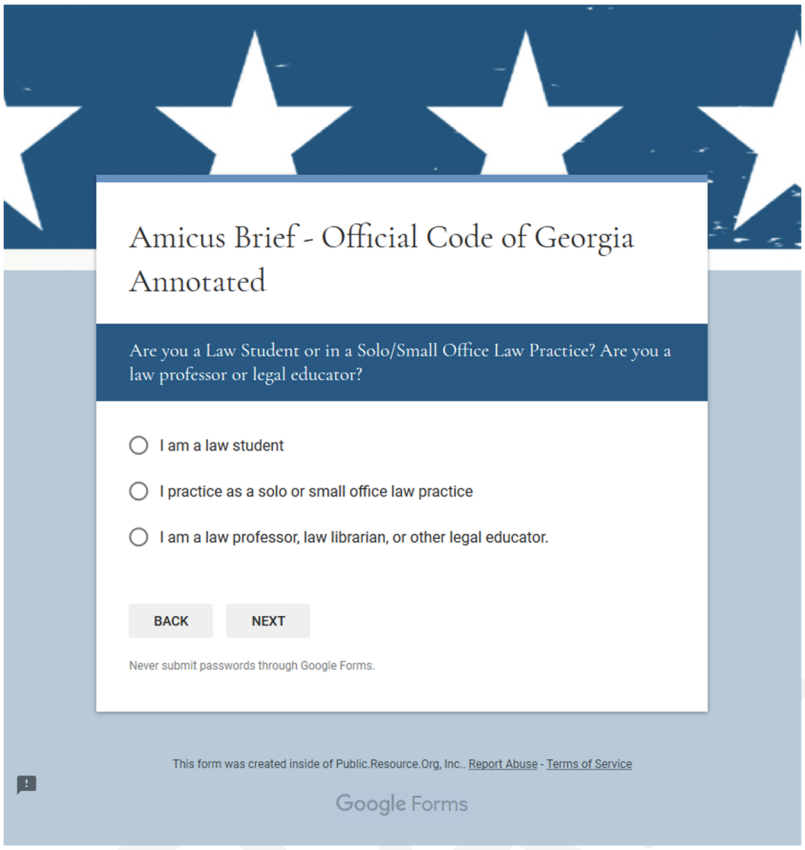


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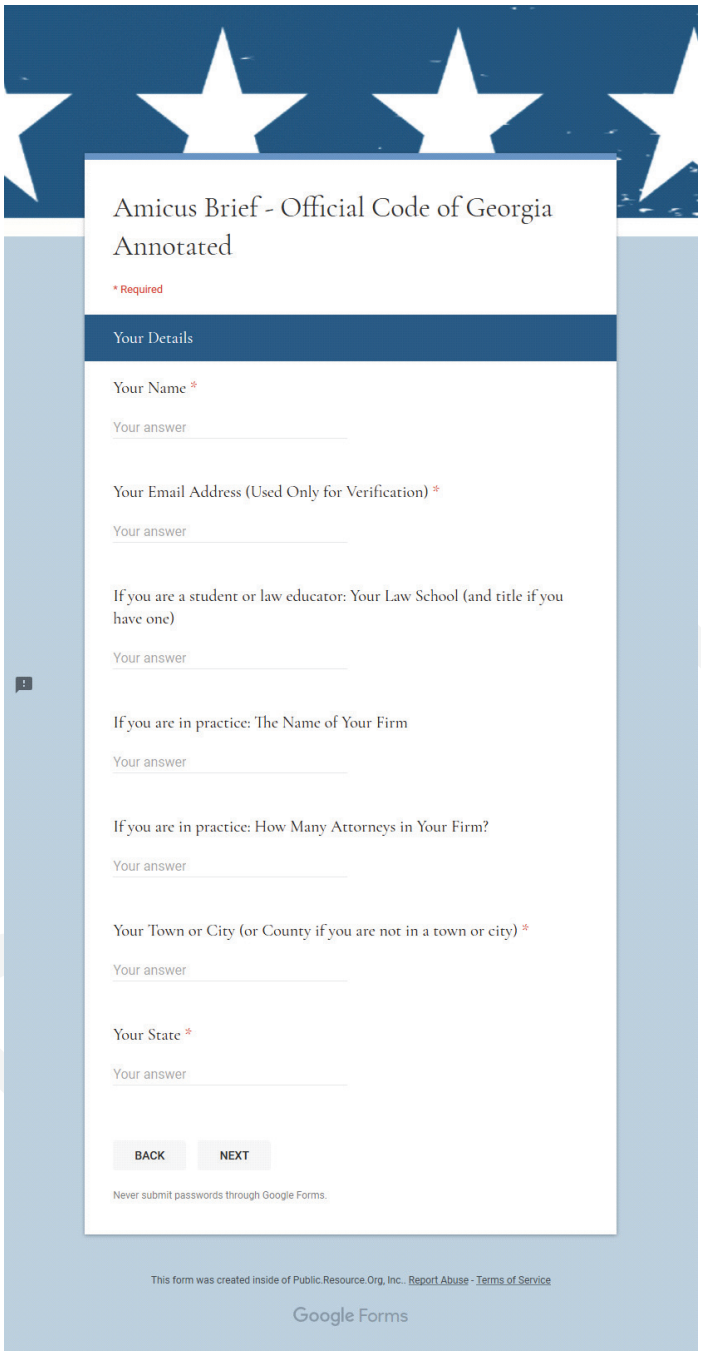
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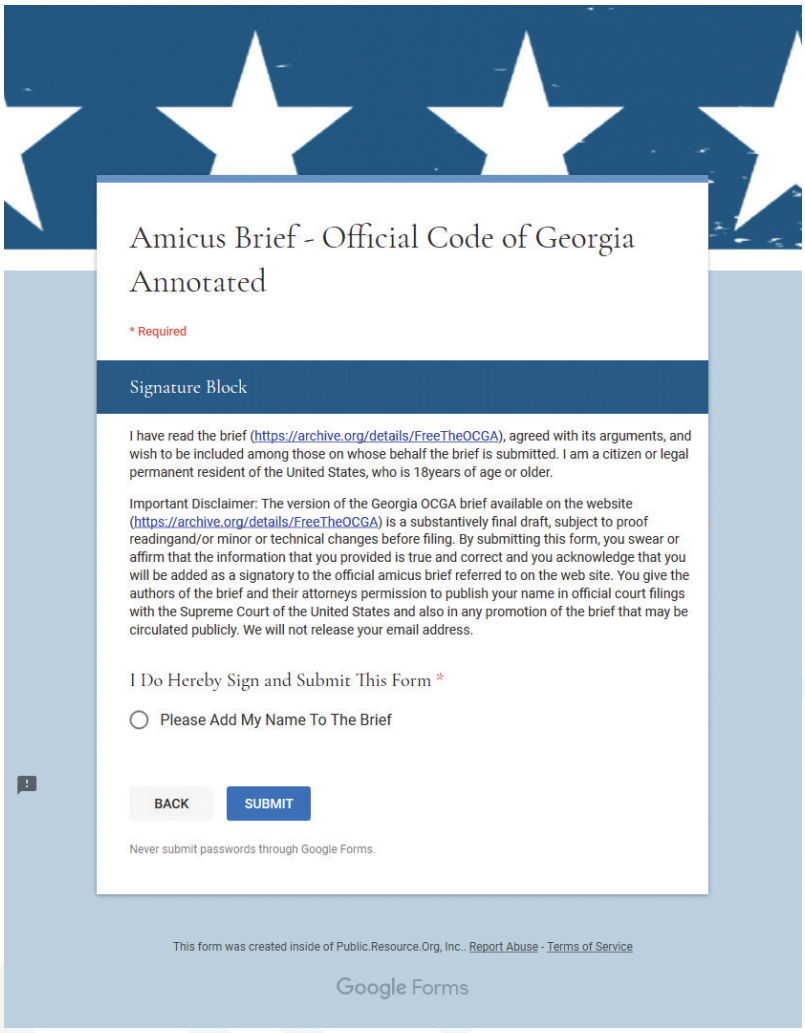
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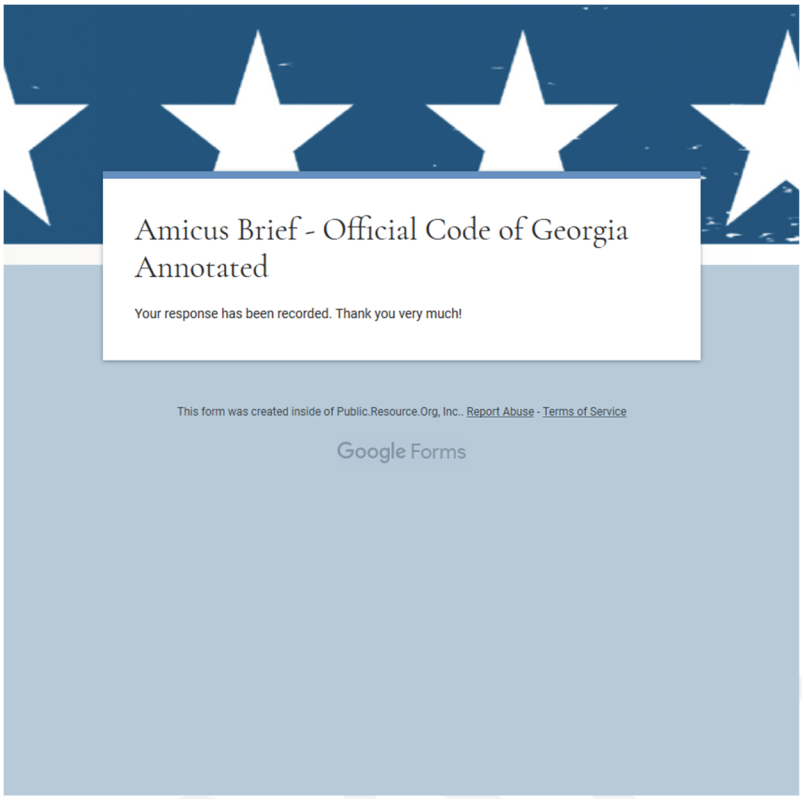
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APPENDIX B:
List of Signatories

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